

ESTTA Tracking number: **ESTTA168626**

Filing date: **10/15/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	bioMerieux, Inc.
Granted to Date of previous extension	10/14/2007
Address	100 Rodolphe Street Durham, NC 27712 UNITED STATES
Attorney information	George A. Pelletier, Jr. Cantor Colburn LLP 55 Griffin Road South Bloomfield, CT 06002 UNITED STATES tm@cantorcolburn.com, MCiotola@cantorcolburn.com, GPelletier@cantorcolburn.com Phone:860-286-2929

### Applicant Information

Application No	78325031	Publication date	04/17/2007
Opposition Filing Date	10/15/2007	Opposition Period Ends	10/14/2007
International Registration No.	NONE	International Registration Date	NONE
Applicant	VIVIDAS TECHNOLOGIES PTY LIMITED 59 WELLINGTON STREET ST. KILDA, VICTORIA, 3182 AUSTRALIA		

### Goods/Services Affected by Opposition

Class 009.

All goods and services in the class are opposed, namely: Prerecorded magnetic data carriers featuring sound, images and data relating to electronic goods being promoted; prerecorded discs featuring sound, images and data relating to electronic goods being promoted; apparatus for recording, transmission or reproduction of sound or images, namely digital video disc recorders and players, and audio disc recorders and players; digital data processors and computers; CD ROMs having stored thereon multimedia software for use in audio and video production and recording; computer software for use in audio and video production and the transmission and conversion of those audio and video productions; computer hardware and peripherals; downloadable computer programs provided online and on disc for the conversion and presentation of media data; prerecorded training videos in the field of computers for third party use

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1785252	Application Date	06/25/1990
Registration Date	08/03/1993	Foreign Priority Date	NONE
Word Mark	VIDAS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1988/08/25 First Use In Commerce: 1988/08/25 automatic immunodiagnostic assay analysis system for body fluids comprised primarily of reagent strips, matching solid phrase receptacles, computer for medically analyzing an enzyme-linked fluorescent immuno assay for in vitro diagnostic use		

Attachments	Notice of Opposition.pdf ( 6 pages )(412140 bytes )
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Signature	/Michelle P. Ciotola/
Name	Michelle P. Ciotola
Date	10/15/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No.	78/325031
Filed:	November 7, 2003
Mark:	VIVIDAS
Published in the Official Gazette:	April 17, 2007

bioMérieux, Inc.

Opposer,

v.

Vividas Technologies Pty Ltd.

Applicant.

Opposition No: \_\_\_\_\_

**NOTICE OF OPPOSITION**

In the matter of Application Serial No.78/325031, filed November 7, 2003 (the “Opposed Application”), for registration of the mark “VIVIDAS” (the “Applicant’s Mark”), covering in relevant part “Prerecorded magnetic data carriers featuring sound, images and data relating to electronic goods being promoted; prerecorded discs featuring sound, images and data relating to electronic goods being promoted; apparatus for recording, transmission or reproduction of sound or images, namely digital video disc recorders and players, and audio disc recorders and players; digital data processors and computers; CD ROMs having stored thereon multimedia software for use in audio and video production and recording; computer software for use in audio and video production and the transmission and conversion of those audio and video productions; computer hardware and peripherals; downloadable computer programs provided online and on disc for the conversion and presentation of media data; prerecorded training videos in the field of computers

for third party use” in International Class 9, by Vividas Technologies Pty Ltd. (“Applicant”), and published for opposition in the USPTO Official Gazette on April 17, 2007, Opposer bioMérieux, Inc. (“Opposer”) believes that Opposer would be damaged by such registration, and hereby opposes the registration of Applicant's Mark.

The grounds for the opposition are as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Missouri, with a principal place of business located at 595 Anglum Drive, Hazelwood, Missouri 63042.
2. Opposer is the owner of U.S. Registration No. 1785252 for the mark VIDAS (“Opposer’s Mark”) for “automatic immunodiagnostic assay analysis system for body fluids comprised primarily of reagent strips, matching solid phase receptacles, computer for medically analyzing an enzyme-linked fluorescent immuno assay for in vitro diagnostic use” in Class 9.
3. Opposer began using the VIDAS Mark at least as early as August 25, 1988 anywhere and in interstate commerce within the United States.
4. As a result of Opposer’s substantially exclusive and continuous use of the VIDAS Mark in connection with the Opposer’s Goods, the VIDAS Mark has developed substantial goodwill and a positive reputation among the industry, the trade, and consumers, and has become one of Opposer’s most valuable assets.
5. On information and belief, Applicant is a proprietary limited company organized under the laws of Australia with a principal place of business at 59 Wellington Street, St. Kilda, Victoria 3182, Australia. Applicant has no relationship with Opposer.

6. On or about November 7, 2003, Applicant filed the Opposed Application Serial No. 78/325031 for the trademark, covering in relevant part “Prerecorded magnetic data carriers featuring sound, images and data relating to electronic goods being promoted; prerecorded discs featuring sound, images and data relating to electronic goods being promoted; apparatus for recording, transmission or reproduction of sound or images, namely digital video disc recorders and players, and audio disc recorders and players; digital data processors and computers; CD ROMs having stored thereon multimedia software for use in audio and video production and recording; computer software for use in audio and video production and the transmission and conversion of those audio and video productions; computer hardware and peripherals; downloadable computer programs provided online and on disc for the conversion and presentation of media data; prerecorded training videos in the field of computers for third party use” in International Class 9. A representation of Applicant’s Mark follows:

VIVIDAS

7. The Opposed Application was filed without Opposer’s authorization, consent, or prior knowledge.
8. The Opposed Application was filed on an Intent-to-Use basis under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b), and based on foreign registration under Section 44 of the Lanham Act, 15 U.S.C. § 1126.
9. The Opposer Mark, including Opposer’s common law rights and U.S. Registration No.1785252, substantially predates the Opposed Application. The Opposer’s application that resulted in U.S. Registration No. 1785252 was also

filed earlier than the Opposed Application, and claims dates of first use earlier than the Opposed Application. Opposer therefore has rights that are senior to any rights that may be claimed by Applicant.

10. The Applicant's Mark is confusingly similar with the Opposer Marks.  
Applicant's mark prominently features the word VIVIDAS in standard character format. The added letters "VI" do not serve to distinguish Applicant's Mark from the Opposer's Mark, VIDAS.
11. The goods with which Applicant intends to use Applicant's Mark are confusingly similar to the goods with which Opposer uses one or more of Opposer's Marks.
12. As a result of the confusing similarity between Applicant's Mark and the Opposer Marks, registration of Applicant's Mark would be likely to cause confusion, mistake, and/or deception of purchasers as to the source of the parties' respective services and goods.
13. As a result of the confusing similarity between Applicant's Mark and the Opposer Marks, registration of Applicant's mark would be likely to cause confusion, mistake, and/or deception as to (a) the affiliation, connection, or association between Opposer and Applicant, and/or (b) the origin, sponsorship, or approval of Applicant's services by Opposer.

WHEREFORE, Opposer bioMérieux, Inc. respectfully requests that the Opposed Application, Serial No. 78/325031, be rejected and that registration for Applicant's Mark be refused.

Dated this 15th Day of October, 2007.

RESPECTFULLY SUBMITTED,  
bioMérieux, Inc.

BY: /Michelle P. Ciotola/  
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Attorneys for Opposer  
bioMérieux, Inc.

Opposer's Matter Reference No.: LAX0061O

### CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been serviced on R. Kent Roberts by mailing said copy on October 15, 2007, via First Class Mail, postage prepaid to R. Kent Roberts, Hodgeson Russ LLP, One M&T Plaza, Suite 200, Buffalo, New York 14203-2391.

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Michelle P. Ciotola, Esq.

Attorney for Opposer